IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 861 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALUSINH UDESINH RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR Jal Unwala for Petitioner

Mr. H.L. Jani, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/12/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. Jal Unwala for the petitioner and learned A.P.P. Mr. H.L. Jani for the respondents.

1. The petitioner has challenged the externment order dated 20-1-2000 passed by the respondent no.2-the Sub Divisional Magistrate, Mehsana, against the petitioner in exercise of powers conferred under Section 56(a) of the Bombay Police Act (for short "the Act"), whereby the petitioner is externed for a period of two years from the area of Mehsana, Patan, Banaskantha, Ahmedabad and Gandhinagar Districts and Ahmedabad City.

The petitioner has also challenged the order of the appellate authority-Deputy Secretary, Home Department, Gandhinagar dated 25-5-2000 rejecting his appeal filed against the impugned order of externment under the provisions of Section 60 of the Act.

2. On receipt of complaint made by the Police Sub Inspector, Vijapur Police Station, the respondent no.2 registered Externment Case no.26/99 against the present petitioner and issued show cause notice under Section 59 of the Act to which the petitioner replied vide letter dated 30-8-1999 and provided explanation as well as representation against the allegations stated therein.

3. It is alleged against the petitioner that six prohibition cases during the period between 24-2-1996 and 21-4-1999 are registered against the petitioner at Vijapur Police Station. That the petitioner after getting himself released on bail has again started indulging into the same prejudicial activity. That on account of his such activity he is causing breach of peace in the area. That four witnesses of the locality have given statement against the petitioner to the effect that the petitioner in a drunken condition is abusing and beating the persons in the area. That the petitioner has been selling liquor near the school which causes adverse affect on the tender minds of the children ; that he has been using force and teasing girls. That on account of fear of the petitioner, the persons of the village are not coming forward to depose against the petitioner or to file complaint against him, and as such, the order of externment of the petitioner from the said Districts as well as the contiguous Districts is necessary.

4. On the basis of the material produced before the respondent no.2, the respondent no.2 passed the impugned order of externment dated 20-1-2000 which was challenged by the petitioner before the Deputy Secretary, Home Department, Sachivalay, Gandhinagar under the provisions of Sec.60 of the Act. That the appellate authority rejected the appeal of the petitioner observing that the prohibition cases are pending against the petitioner at

Vijapur Police Station of the years 1996, 1997, 1998 and 1999. It has also been observed that the witnesses have given evidence against the petitioner which supports the allegations made by the respondent no.2 and in order to prevent the petitioner from continuing his prejudicial activity, the externment order passed by the respondent no.2 is just and proper.

5. Mr. Unwala, learned Advocate for the petitioner has assailed the impugned order contending that the alleged prohibition cases registered against the petitioner are still pending. Not only that, evidence of the four witnesses do not disclose any incident of using force by the petitioner or causing violence in the area in question. That the material relied upon by the respondent no.2 while passing the order of externment is not only vague but appears to be stereotype used by the authority with a view to take action against the petitioner. Furthermore, though the proceedings against the petitioner started as early as in August, 1999, the impugned action has been taken only in January, 2000 which amounts to consuming more than six months. That the appellate authority has also erred by not applying his mind to the contention urged and has passed a mechanical order rejecting the appeal of the petitioner.

6. It would be pertinent to note that except the registration of prohibition cases against the petitioner , no incident of violence or using of force have been registered. That in the years 1996 and 1997 two cases in each year and in the year 1998 one case; and in the year 1999 also one case were registered against the petitioner. That the impugned action is taken in the year 2000 which suggests that the authority has taken into consideration the stale incidents of the years 1996, 1997 and 1998 which cannot provide the basis for passing the order of externment. The evidence of privilege witnesses as enumerated in the order is vague and devoid of any specific incidents showing time , place or date which can provide material to the petitioner to rebut the same and/or lead evidence against the same.

7. On overall consideration of the aforesaid material, it cannot be said that the externing authority had acted on cogent and convincing material, and as such, it is difficult to sustain the impugned order of externment dated 20th January, 2000 passed by the respondent no.2. The order passed by the appellate authority dated 25-5-2000 also suffers from the vice of not being supported by cogent and convincing reasons,the same having been passed mechanically. Hence, the order

of the appellate authority also could hardly be sustained in law.

8. As the petition succeeeds on the abovestated grounds alone, it is not necessary to consider and decide the other grounds raised and canvassed at the Bar.

9. As a result of the foregoing discussion, the petition is allowed. The impugned order of externment dated 20-1-2000 passed by the respondent no.2 in Externment Case no.26/999 against the petitioner and order of appellate authority passed by the Deputy Secretary, Home Department dt.25-5-2000 u/s.60 of the Act rejecting the appeal of the petitioner against the impugned order are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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